DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 98-0297
GROSS INCOME TAX
For Years 1994, 1995, AND 1996

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ISSUES

I. Gross Income Tax – Property damage settlements

Authority: 45 IAC 1-1-25; 45 IAC 1-1-131

Taxpayer protests inclusion of income from property damage settlements in taxpayer's gross income.

STATEMENT OF FACTS

Taxpayer is an Indiana rural electric membership cooperative serving the electric needs of residential rural and agri-business customers in parts of 8 counties. The customers are also shareholders in the venture. The taxpayer's distribution system includes poles, wires, and substations that are not insured by the taxpayer. Therefor, any loss of poles, wires, and substations must be absorbed by the taxpayer or charged to the person who incurred the damage. For example, if a person's motor vehicle hits a taxpayer pole and damages it, taxpayer would bill the person for the damages in order to repair the equipment. In many instances, the person's insurance company would pay for the damages. Taxpayer would cash the check and replace the pole using the funds received.

I. Gross Income Tax – Property damage settlements

DISCUSSION

The taxpayer receives checks from insurance companies for damages to company property. The auditor assessed gross income taxes on these amounts as settlement income under 45 IAC 1-1-25 which states:

> Income from Judgments and Damages. Gross receipts received from judgments or damages secured through suit in court or from settlement between the parties involved are taxable at the rate or rates which would

> be applicable to such income if derived from sources other than judgments or damages. If the receipts or any portion thereof originated from a nontaxable source, the fact that it was collected through a judgment will not make it taxable.

The taxpayer maintains that 45 IAC 1-1-131; which states:

> Property Damage Insurance Receipts. Amounts received from insurance companies as compensation for property damages are exempt from gross income tax to the extent that such amounts are actually used for the replacement of property. Replacement must take place within a reasonable period of time, not to exceed two (2) years from the date of the insurance recovery.

The audit concluded that for an insurance settlement payment to be exempt, it would be required to come from the taxpayer's insurance company. The regulations make this distinction, taxpayer suffered a loss of property and did not receive compensation for said loss from the taxpayer's insurance company. The payment is the settlement of a damage claim between the taxpayer and an individual, as contemplated in 45 IAC 1-1-25. The use of these funds does not fall within the exemption set out in 45 IAC 1-1-131, which presumes privity between the taxpayer and the paying insurance company, and the funds should be included in taxpayer's gross income.

FINDINGS

The taxpayer's appeal is denied.

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